

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MITCHELL WILLIAM BORROUSCH,

Defendant-Appellant.

UNPUBLISHED

November 15, 2002

No. 234428

Oakland Circuit Court

LC No. 00-174113-FH

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of breaking and entering a building with intent to commit larceny, MCL 750.110. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to three to twenty years in prison. We affirm.

The following evidence was adduced at trial. The victim's neighbor, Pontiac Police Sergeant Brian Thomas, saw defendant and Anthony Williams pull into his driveway in the early hours of June 14, 2000. Thomas testified that while defendant sat in the passenger's seat of the car, Williams got out of the car and tried to gain access to Thomas' locked garage. After failing in this attempt, Williams and defendant backed out of his driveway and drove away. Thomas got into his car and followed defendant and Williams. He saw them parked in the victim's driveway just a few houses down the street. The victim testified that on that particular morning he was sure that he had closed his garage door before leaving for the day, and Thomas testified that when he first saw defendant and Williams in the victim's driveway, the garage door was closed. Thomas saw Williams walking toward the closed garage.

Thomas drove around the block and returned in less than a minute. He saw that the victim's garage door was open and Williams was walking out of the garage pushing a blue bicycle. Williams rode down the victim's driveway on the blue bicycle which belonged to the victim. Defendant had moved into the driver's seat. As Williams rode the bicycle down the street, defendant followed him in the car. When defendant was arrested, the police found the victim's leaf blower and a set of tools in the car.

Defendant argues on appeal that the prosecution failed to produce sufficient evidence to support his conviction. We disagree. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). "The question is whether the evidence

presented at trial, together with all reasonable inferences arising therefrom, was sufficient to allow a rational trier of fact to find each element of the crime proven beyond a reasonable doubt.” *Id.* Michigan has abolished the distinction between a principal and an accessory. MCL 767.39. To convict a person as an aider and abettor, the prosecution must prove that the crime was committed by the defendant or another person, that the defendant performed acts or gave encouragement that aided or assisted the commission of the crime, and that the defendant intended for the crime to be committed or had knowledge that the principal was going to commit the crime at the time the defendant gave the aid or assistance. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993).

A conviction for breaking and entering requires a showing that (1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny or felony therein. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). To establish these elements, circumstantial evidence and reasonable inferences drawn therefrom may be sufficient. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

The prosecution presented evidence that when Thomas first saw defendant and Williams in the victim’s driveway, the victim’s garage door was closed. Just a minute later, the garage door was open and Thomas saw Williams riding the victim’s bicycle down the driveway. When defendant was arrested, he was in possession of the victim’s leaf blower. Defendant’s statement to the police after his arrest establishes that, prior to breaking into and entering the victim’s garage, defendant was aware that Williams was driving around “looking for open garages for about a half hour to forty five minutes.” Once Williams began riding away on the victim’s bicycle, defendant moved into the driver’s seat and drove away with the stolen leaf blower. Viewed in the light most favorable to the prosecution, we conclude that the evidence was sufficient to support defendant’s conviction of breaking and entering a building with intent to commit larceny.

Defendant also argues on appeal that the trial court abused its discretion by sentencing him to a term of three to twenty years in prison. As defendant acknowledges in his brief on appeal, his minimum sentence is within the sentencing guidelines range of ten to forty-six months. We are required to affirm a defendant’s sentence that is within the guidelines provided that the sentencing court did not make an error in scoring the guidelines and did not rely upon inaccurate information in determining a defendant’s sentence. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). Defendant makes no such claim of error. Accordingly, we affirm.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald